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July 11, 2001

REDACTED – FOR PUBLIC INSPECTION

Via hand delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: CC Docket No. 01-138

Dear Ms. Salas:

Enclosed for filing in the above-referenced docked is a confidential copy of comments of Covad Communications Company. Covad is also filing these comments in a redacted form.

Any parties seeking access to these documents should contact the undersigned at 202-220-0409.

Very truly yours,

Florence Grasso

Florence Grasso

REDACTED FILING ---- FOR INCLUSION IN THE PUBLIC DOCKET

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Application by Verizon Pennsylvania Inc., Verizon	)	
Long Distance, Verizon Enterprise Solutions,	)	CC Docket No. 01-138
Verizon Global Networks Inc., and Verizon	)	
Select Services, Inc., for Authorization	)	
to Provide In-Region, InterLATA	)	
Services in Pennsylvania	)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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Prologue

A SLAPP suit (strategic lawsuit against public participation) is a calculated and meritless harassment lawsuit, filed by a malfeasant corporation against its most vocal critic in an effort to silence it. SLAPP suits raise unsubstantiated and unverified doubts about the veracity of the critic, in the hopes that the critic will be scared into muteness, allowing the malfeasant corporation to continue its behavior without challenge.

Covad has been an active participant in the section 271 process because of the very real, very serious discriminatory conduct perpetrated by Verizon against competitors in a deliberate effort to thwart competitive entry into its monopoly territory. In the wake of its Massachusetts long distance filing, which it was forced to withdraw and refile due to overwhelming evidence of discriminatory conduct against competitors, Verizon is on a campaign to silence the opposition. Of the six DSL CLECs who opposed Verizon's first Massachusetts filing, only one still stands to oppose the instant application. Northpoint, Digitial Broadband, and Vitts have all gone out of business. HarvardNet shut down its DSL operation entirely and is now a web hosting company. Rhythms operates without a CEO or General Counsel and has withdrawn from most regulatory proceedings. Only Covad remains to challenge Verizon's conduct.

And now, Verizon has filed a patently frivolous lawsuit against Covad, claiming that Covad engaged in a corporate policy of submitting false trouble tickets to Verizon in order to (1) advance its public policy agenda by falsely alleging discriminatory conduct by Verizon, and (2) obtain free maintenance and repair services from Verizon technicians. A substantive response to those claims is neither necessary nor appropriate in this docket. If justice is done, Verizon will eventually suffer the consequences of its

legal strategy. All that must be asserted here is that Covad has never, and never will, engaged in any deliberate misrepresentations of fact or legal argument to this Commission or any other regulatory body. Covad does not have a corporate policy of submitting false trouble tickets to Verizon. Covad does not deliberately falsify the factual information it provides the Commission.[1] Covad's advocacy is forceful because the Constitution guarantees a right to petition government for redress. Verizon's efforts to interfere with that right will not succeed.

Introduction

Calling Pennsylvania the strongest application the Commission has yet seen, Verizon claims that the steps it has taken to open its market in Pennsylvania provide unquestionable evidence of its compliance with the competitive checklist. Although the application may be Verizon's best effort yet, it still falls short of the standards required by this Commission for approval of a long distance application. As with its prior comments, Covad relies in this proceeding on information provided by Verizon, either in the context of this proceeding or in its "business" relationship with Covad. Covad continues its past practice of relying principally on data provided by Verizon, not Covad's own data, in order to ensure that all parties are working from the same figures.

Performance metrics: The numbers just don't add up

As discussed in greater detail below, the performance metrics on their face demonstrate discriminatory performance by Verizon. But the performance metrics on their face tell an even more interesting story: Verizon is grossly underrepresenting its

[1] The two examples cited by Verizon of allegedly false factual information provided by Covad to the FCC each concern typographical errors that were corrected by Covad in the public docket of the respective section 271 applications (Massachusetts and Connecticut) while those applications were still pending. Errors in pleadings that Verizon has corrected on the record are too numerous to recount.

performance each month in a wide variety of categories by simply counting a small percentage of the actual loops it provisioned. To anticipate Verizon's response to this comment, Covad is not engaging in late criticism of the metrics. The metrics serve their purpose and are useful tools for evaluating certain aspects of Verizon's performance. The Commission cannot, however, look solely at what Verizon includes in the metrics: it must also examine what Verizon excludes from the metrics. In those exclusions, which in the case of DSL loops and linesharing far outnumber the inclusions, the Commission will find the true accounting of Verizon's discriminatory conduct in Pennsylvania.

For example, PR 3-03 purports to show the percentage of time Verizon completes linesharing UNE orders within 3 days, the interval in Pennsylvania. For the months of January through May 2001, Verizon reports on a total of 221 "observations" – in other words, 221 total linesharing UNE orders – for all CLECs in Pennsylvania. Verizon claims on-time performance in May 2001 of 100%. Looks good on its face. But in Pennsylvania, Covad alone has about *** linesharing UNEs in service – over three times more than Verizon reports on for ALL CLECs. Where are the hundreds of orders that are missing? Why didn't Verizon count them? More importantly, why didn't Verizon provide an accounting to the Commission of the reason it excluded at least two thirds – probably more – of linesharing orders from its performance metrics?[2] The Commission simply cannot be satisfied that Verizon is in compliance with the checklist until Verizon

[2] Covad requested raw data from Verizon in order to analyze the reasons for the various exclusions claimed by Verizon. Such a request could not have come as a surprise to Verizon – Covad has requested the exact same thing from Verizon in each of its prior section 271 filings. In fact, Covad gets the raw data automatically in New York along with the monthly C2C reports, so Covad was mystified that it even needed to request the raw data from Verizon for Pennsylvania. Indeed, the Commission required Verizon to provide the data to Covad in Massachusetts, so Verizon should have automatically provided it for Pennsylvania. In a fortuitously timed move, Verizon began complying with Covad's request on July 9, ensuring that Covad would not have adequate time to review the data before comments were due on July 11. Same story, different 271 filing.

reports to the Commission its true performance, rather than the self-selectively filtered performance it has provided thus far.

The issue is not, obviously, limited just to linesharing metrics. Verizon is permitted by business rules to utilize certain exclusions from the metrics, but Verizon does not provide CLECs (or, for that matter, the Commission) any opportunity to contest those exclusions. Take for example the "CLEC requested due date longer than standard interval" exclusion. This is a Verizon favorite. Verizon claims that a CLEC requested a longer due date than the standard interval – for example, a due date five days in the future, rather than the three day interval for linesharing that Verizon has in place across its footprint. Why would a CLEC request a longer due date than it is entitled to – and thus deny its customer service for longer than necessary? Covad is puzzled. The Commission should be too. One possible answer is that Verizon is not informing CLECs when it changes its internal OSS to accept a shorter due date. Thus, for example, the Pennsylvania PUC required Verizon to provide a three day interval for linesharing on November 15, 2000, in the Covad/Verizon linesharing arbitration. But Verizon did not inform CLECs that Verizon's OSS had been updated to accept a three day interval for linesharing until Change Control sent an email on May 1, 2001.[3] Because Covad had not been informed by Verizon that it was prepared to accept the shorter interval, Covad would (obviously) not as a matter of course submit linesharing orders with a three day interval request, given Covad's natural expectation that its orders would be rejected for requesting too short an interval. But if Verizon considered the interval 3 days starting November 15, 2001, it would logically consider itself entitled to exclude from its performance metrics all CLEC linesharing orders that requested a longer interval – such

as the five day interval that all CLECs were presumably requesting. Is this why so many linesharing orders are excluded from Verizon's metrics? Perhaps. Unfortunately, Verizon does not permit Covad (or the FCC) to audit these and other exclusions. The Commission must inquire into this and all other metric exclusions Verizon has availed itself of, in order to get a true picture of Verizon's real, unedited performance.

In sum, Covad does not accept that Verizon's on-time performance for DSL loops is, as Verizon claims in May 2001, 95.70%.[4] Verizon contends that it "observed" 372 CLEC DSL loop orders in May 2000. Verizon's "FOC +1" report, delivered daily to Covad, shows that it completed *at least* *** DSL loops for Covad in May 2001.[5] Where are all the missing loops? Is Verizon reporting a self-fulfilling prophecy – reporting only its on-time performance for loops that it completed on time, and excluding everything else? Certainly, based on the figures that Verizon provided to Covad, it is excluding the majority of its loops from its performance metrics. Is the Commission yet again going to be satisfied with only a partial analysis of Verizon's performance, or is it finally going to require Verizon to demonstrate conclusively what happened to *all* the DSL loops it was to provide to CLECs in each month? Who has the burden of proof in a section 271 application?

The same issue arises as to average completion interval (PR 2-02). Verizon claims in May 2001 that it completed the average DSL loop UNE in 5.82 days, and notes 359 observations for all CLECs. Beyond asking what happened to the 13 loops that

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[3] See Attachment F.
[4] PR 3-10.
[5] Verizon provides Covad each day a list of the UNE loop orders it completed for Covad the previous day. If the Commission were to simply ask Verizon how many loops it provided to Covad (and other DSL providers) in May 2001 in Pennsylvania, it would have a better understanding of just how many loops Verizon is excluding from the metrics.

disappeared between PR 3-10 and PR 2-02 (372-359=13), the Commission should again refuse to be satisfied without a full accounting of what happened to the hundreds of CLEC DSL loop orders that aren't captured by these metrics. This isn't a problem with the metrics themselves – it is a problem with Verizon's failure to provide the Commission with information on its loop performance for *all* loops, not just the loops Verizon chooses to report.

Loop performance

Verizon's loop and linesharing performance, even on the face of the metrics, is discriminatory. At the outset, Verizon offers the same offhanded excuse for its poor performance in this application as in all others – DSL loops are a tiny subset of standalone loops, and the insignificant number of DSL loops should be treated with less scrutiny by the Commission. Thus, Verizon argues that in Pennsylvania, of the 164,000 stand-alone loops Verizon has provisioned, only 16,000 were DSL loops, about 10%.[6] This figure is, not surprisingly, misleading. Verizon's 164,000 loops figure includes hot cut loops[7] – and although Verizon refuses to break out the exact number that are hot cut loops, it is safe to guess that the vast majority are hot cut loops. Is a hot cut loop really a "provisioned" loop? Of course not. Hot cuts merely require software changes and a cross-connect, not any field provisioning work. Are hot cuts thus an adequate gauge of Verizon's loop provisioning performance? Of course not – there is no provisioning work to be done. The Commission should not be deceived by Verizon's numbers game: DSL loop provisioning is the best way for the Commission to evaluate whether Verizon has the processes and procedures in place to provision loops in a nondiscriminatory manner.

[6] Lacouture/Ruesterholz Decl. at para. 161.
[7] *See id.* para 102.

Verizon appears to have excluded a number of data points from its metrics calculations for xDSL loops. For example, Verizon states in the February metric report that it calculated PR-2-02 and PR-3-10 using 172 and 175 xDSL loops, respectively, provisioned to all CLECs in Pennsylvania. As Covad noted in its comments on that report to the Pennsylvania PUC, Covad, by itself, received 276 xDSL loops from Verizon in February. Verizon obviously whittled the number of data points down to a lower number, but it has not explained that process. The Commission should not turn a blind eye to this behavior.

Verizon's most blatant discrimination is revealed in the loop quality metrics. Measured by PR 6-01, loop quality demonstrates how often Verizon delivers a loop to Verizon that does not work. PR 6-01 for the period February through May 2001 demonstrates that anywhere from 7.48% (February 2001) to 4.27% (April 2001) of CLEC DSL loops result in trouble tickets within 30 days. The Commission has repeatedly found this metric particularly useful, because trouble tickets submitted within 30 days of loop provisioning indicate that the loop likely never worked when delivered.

But even the poor performance on its face doesn't tell the whole story. Verizon is also systematically excluding trouble tickets that its technicians code as "no trouble found" (NTF). The classification of a trouble report as NTF is entirely within Verizon's own discretion – tickets can be coded NTF for any reason ranging from an error by a Verizon technician to a technician who simply wanted to go home before checking a loop for trouble. NTF-coded trouble reports are particularly important given the business rules of the trouble metrics: Verizon is permitted to exclude any trouble tickets marked NTF from the reported performance. (This highlights the facial absurdity of Verizon's claim

that Covad makes up trouble tickets: if the trouble tickets are false as Verizon claims, they would be coded as NTF and excluded from the metrics, thus gaining Covad nothing.)

As the Commission no doubt recalls, the legitimacy of Covad's trouble ticket complaints was validated by the Massachusetts DTE in the course of the Verizon Massachusetts long distance proceeding. Specifically, the DTE reconciled a month's worth of trouble tickets, and found that every one of those tickets referred to a loop that did not work on the provisioning date. In other words, the tickets were all opened on non-working loops.[8] Attached as Exhibit C is evidence that this issue continues to be a problem for Covad throughout the Verizon footprint.[9] Verizon claimed that it was finding a majority of Covad trouble tickets to be NTF – no trouble found -- and submitted to Covad a study it performed on 9 trouble tickets from New York. Covad's examination of those tickets revealed that at least seven of the nine tickets that Verizon had claimed were NTF were attributable to Verizon. Covad has not heard a response from Verizon since May on this issue, and Verizon refused Covad's request to implement a solution for the continued trouble ticket problems Verizon faces – despite Verizon's repeated commitments (relied upon by the FCC) to fix these problems. Perhaps Verizon

[8] Unfortunately, the Commission – after encouraging Covad to expend the effort to have its evidence validated by the DTE – thanked the parties for doing the validation, but ignored the discriminatory conduct by Verizon that the validation revealed. *See* VZ Mass. 271 Order at para. 147 ("We welcome the Massachusetts Department's participation in addressing Verizon's acceptance testing process and are encouraged by the improvements to this process. We encourage carriers to bring issues such as these to the attention of state commissions so that factual disputes can be resolved before a BOC applicant files a section 271 application with this Commission."). Indeed, the Commission relied explicitly on Verizon's promises of future performance improvements to resolve what the Commission called "installation quality impairments," rather than requiring Verizon to come into compliance with the competitive checklist at the time of its application filing. *See id.* at para. 148 ("Moreover, we find that Verizon's remedial efforts to improve the stand-alone xDSL loop provisioning and acceptance testing process, in addition to those agreed to in the context of the Massachusetts Department's reconciliation proceeding, are likely to reduce competitive LEC installation quality impairments in the future.").

was simply telling the Commission what it needed to hear while the Massachusetts 271 was pending, and Verizon promptly forgot its promises once the application was approved.

A related matter is the metrics' treatment of repeat trouble reports. In Covad's experience, Verizon's metrics do not properly reflect the true trouble ticket report percentage, because Verizon improperly codes trouble reports as NTF, excluding them from the metrics. This problem is compounded by the repeat trouble ticket metrics, which also exclude any NTF coded tickets. If Covad has to submit 5 trouble tickets on the same loop, and Verizon improperly finds no trouble on the first 4 while admitting finally on the fifth ticket that it has repair work to perform, 4 of those 5 trouble tickets will be excluded from the metrics, and there will be no repeat trouble ticket scored at all. This is not simply hypothetical – see Attachment C for an indication of how frequently this occurs. Unfortunately, Verizon's metrics will not reflect these facts.

Relying solely on the metrics as presented by Verizon raises another concern. When calculating its provisioning metrics, Verizon is permitted by the business rules of the metrics to exclude any loop orders that were cancelled. As the Commission is well aware, Covad has long complained that Verizon's loop provisioning practices cause so much delay, that many of Covad's customers simply cancel their orders after a protracted wait for service. As a result, Verizon scores two victories at once: Covad loses a customer because of Verizon's delay in providing a loop, and Verizon gets to exclude the order from its provisioning metrics. Again, the Commission should not be satisfied with this result. Rather, the Commission should require Verizon to provide specific

[9] Verizon claims that it relies on the exact same DSL provisioning practices and procedures in New York, Massachusetts, and Pennsylvania, so a problem in one of these states is a problem in all these states.

information on each DSL loop (because Verizon claims DSL loops are such a tiny percentage of overall loop volume, it couldn't possibly object to this request.) If the Commission had before it the loop circuit ID, date order submitted, date of FOC, date of provisioning (or, date of cancellation of order), reason for delay, if any, and whether the loop was subject to a trouble ticket, there would be no question as to Verizon's true performance. Why wouldn't the Commission want to know what happened to each and every DSL loop ordered by a CLEC? Given the serious evidentiary dispute that arises in each of these long distance applications, why can't the Commission once and for all ask Verizon to tell the whole story? Verizon has all this information readily available. It would be nice to see the Commission require Verizon to provide it.

Finally, there is the issue of facilities misses. Verizon is permitted by the provisioning metrics to exclude so-called facilities misses – orders that were not provisioned because Verizon claimed that facilities are not available. Covad has asked Verizon repeatedly to explain why it is that Covad is subject to facilities misses – does Verizon not have sufficient copper capacity? Does Verizon have certain loop facilities that it will not make available as DSL loops? Whereas Verizon certainly has a plan to ensure necessary facilities are always available for its own retail arm, does Verizon have a similar plan to ensure that available facilities are provided to CLECs? Attachment A, a letter from Covad to Verizon, sets out the number of times that Covad has asked Verizon for this information, and the number of times that Verizon has refused. The Commission should require Verizon to demonstrate that the facilities problems that Covad consistently suffers (in March 2001, for example, PR 5-01 demonstrates that DSL CLECs suffered

2.49% missed appointments for facilities issues, whereas Verizon retail suffered exactly 0%.)

Linesharing

Verizon notes in its brief that it has provided over 60,000 linesharing UNEs to CLECs in Pennsylvania since the Commission ordered linesharing provisioned as a UNE in November 1999. Verizon also notes that 59,000 of those orders were provisioned to its own retail affiliate, VADI, and a measly 1,000 were provisioned to all other CLECs combined.[10] How is this possible?

Quite simply, Verizon followed in Pennsylvania the pattern it followed in Massachusetts – wait until literally moments before filing a long distance application before providing linesharing capability for unaffiliated CLECs. For example, Verizon notes that it conducted what it calls "quality audits" of the central offices in Pennsylvania that had been augmented for linesharing pursuant to CLEC requests. Verizon was under an obligation to completely provision its central offices for linesharing UNE ordering capability by June 6, 2000. But Verizon simply did not perform the necessary installation work properly, and by its own admission it had to audit its work and correct numerous problems. Not only did Verizon admit it made mistakes in installation, it admitted that it made them more than once. Verizon concedes that even after it audited all its installation work, it still had nonworking offices that required a *second* audit and subsequent repair work. Verizon claims that "due to the unique characteristics associated with linesharing collocation work, the routine inspections of the initial line sharing collocation arrangements did not always identify certain issues." In other words, even a first round of audits and repairs didn't fix the problems. Verizon thus had to reinspect everything in

a second round of "quality inspections."[11] Indeed, as Verizon's own application states, it inspected its work (again) in *** Pennsylvania central offices in November and December 2000 and in January and February 2001, and found that only ***** offices passed inspection. [12] Verizon then took corrective action to fix problems in those offices that were preventing CLECs (except VADI) from ordering linesharing UNEs. Verizon and Covad finally certified that Verizon fixed all offices as of March 14, 2001. It is not hard to figure out how Verizon's retail DSL arm, which had operational linesharing capability made available in 1998 and 1999, could amass nearly 60,000 customers, when Covad and other data CLECs could amass only a thousand customers. Covad has only been able to provide linesharing in Pennsylvania since March 14, 2001. Of course, Verizon can claim today that it is operationally ready, because it fixed its central office linesharing arrangements a short time before filing the instant application. Shame on Verizon for playing this game. Shame on the Commission if it lets Verizon get away with it.[13]

What should the Commission do? In the Massachusetts long distance proceeding, the Commission glossed over Verizon's delayed implementation of linesharing capability and instead focused on the fact that Verizon eventually fixed the problems, which was true. Here, Verizon has done the same thing. Here, the Commission has before it a record where Verizon itself admits that only ***** offices in Pennsylvania in which CLECs had requested linesharing capability were actually ready in late 2000/early 2001.

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[10] Verizon Brief at 33.
[11] Lacouture/Ruesterholz Decl. at para. 206.
[12] Verizon response to in-hearing data request number 41, VZ PA 271 application (confidential version), volume 1b, tab 10. *See also* Attachment G to these comments, a spreadsheet compiled by Verizon and provided to Covad detailing the offices that failed Verizon's own inspections in January 2001.
[13] Covad submitted documentary evidence of Verizon's failure to comply with the linesharing provisions of the Commission's rules to the Enforcement Bureau months ago, and has heard nothing.

Indeed, all offices were not ready until March 2001.[14] If the Commission is once again going to sign off on this late compliance, it can at least consider enforcing its own rules, given Verizon's admission of noncompliance. The Commission should require sworn affidavits from Verizon, setting out the date on which each central office was actually fixed and completely operational for linesharing, and what problems were found in each and every "quality audit" conducted throughout Pennsylvania and the rest of the footprint.[15]

As to linesharing performance, Verizon as usual severely underreports its performance. In April 2001, for example, Verizon reports via Pr 3-03 that it completed 89% of linesharing orders on time. Verizon reports 9 observations. As to Covad alone, Verizon completed at least *** linesharing orders in April 2001. What was Verizon's performance as to all the linesharing UNEs that Verizon provisioned in April 2001? Only Verizon knows.

Attachment B sets out the problems that Covad continues to experience in getting functional linesharing UNEs from Covad. Despite Verizon's claims to the contrary, Verizon continues to deliver non-working linesharing UNEs to Covad. Verizon claims that its linesharing UNE systems and procedures are the same in New York, Massachusetts, and Pennsylvania, and relies on the Commission's prior approval of applications in those states. As set out in Attachment B, Verizon continues to

[14] Verizon claims that Covad filed its applications for linesharing too late for Verizon to begin working to provision central offices for linesharing capability. For evidence of what really happened, see Attachment E, the email from Covad to Verizon enclosing all 60 linesharing applications for Pennsylvania. The applications were originally filed on April 14, 2000, but Verizon asked for corrections to the applications, so they were refiled 10 days later, on April 24, 2000. It is impossible to understand how Verizon can claim not to have been notified by Covad that Verizon should begin preparing offices for linesharing capability.
[15] Covad has already requested this information from Verizon on numerous occasions, and Verizon has refused each time to provide it.

discriminate against Covad in all of those states and more – and Verizon refuses to address the problem.

Audit reports

In recent weeks, a slew of audit reports have made their way into the Commission. The reports, submitted by Verizon pursuant to the Bell Atlantic/GTE merger order, have covered a wide variety of topics – and have found a wide variety of violations of the 1996 Act and the Commission's rules. The Commission has all of these audits available to it, and cannot ignore the findings that directly bear on the instant application.

There are many. As to collocation, the Arthur Andersen audit made several findings of noncompliance with the Commission's collocation rules. In particular, Arthur Andersen stated that its audit "disclosed the following noncompliance with certain FCC Collocation Rules specified above applicable to the Company during the period July 1, 2000, through October 31, 2000."[16]

> Collocation Application Fees "The fee was collected from requesting carriers in the majority of cases. However, the application fee was not collected from the Company's advanced services affiliate."[17]
>
> Virtual collocation: "We also noted that the Company has not rendered bills to the advanced services affiliate for completed virtual collocation arrangements during the examination period."[18]

Given the competitive significance of collocation costs for any carrier seeking to enter Verizon's territory, this audit finding brings into question Verizon's compliance with

[16] Audit Report at 1.
[17] Audit at 2.

section 251(c)(6) of the Act. Verizon is required to provide collocation space pursuant to "just, reasonable, and nondiscriminatory" rates, terms and conditions. Charging Covad and other CLECs millions of dollars for collocation space, while permitting its own retail DSL affiliate to collocate for free, is none of those things. Until such time as Verizon provides restitution to Covad to compensate for the favorable treatment Verizon granted its own affiliate, Verizon is in violation of section 251(c)(6) and the section 271 checklist's collocation requirements. Verizon must immediately refund to Covad all monies Covad paid to Verizon during the time period that Verizon permitted its own affiliate to collocate for free.

The collocation audits also found Verizon in violation of all of the following collocation rules:

(1) failure to update website to inform CLECs when space is exhausted in a central office, leading CLECs to file collocation applications and seek space in offices Verizon knew to be full;

(2) failure to seek state PUC authorization before unilaterally declaring a central office to be space-exhausted;

(3) failure to permit CLECs to collocate without using an intermediate point of interconnection – a so-called POT bay.

The Commission cannot permit Verizon to claim compliance with the Commission's collocation rules and checklist collocation obligations without first addressing these violations with enforcement action.

Arthur Andersen also audited Verizon's compliance with the Commission's OSS rules. The Arthur Andersen audit of Verizon's compliance with the *UNE Remand Order*

[18] Audit at 2.

found that Verizon possessed information on loop makeup in its OSS that it made available to itself, but not to competitive LECs. Specifically, the audit found that Verizon "maintains an electronic database that contains detailed line information about a limited number of loops." The audit report found that employees of Verizon "may access the information in this database electronically. However, this line information is only accessible to requesting carriers through a manual process."[19]

This audit finding echoes Covad's section 271 comments in opposition to Verizon's Massachusetts application – comments ignored by the Commission. The manual process is still all that Covad has access to today. Covad can request access to loop makeup information only by sending an email to Verizon, which Verizon commits to answer via email within two days. Certainly, Covad is denied the ability to inform its potential customer in real time – while the customer is still on the phone – whether the customer's loop qualifies for DSL service. Rather, Covad must return to the customer a minimum of a day later with an answer. What customer will await such a call, when Verizon can inform the customer instantly while on the phone if service is available? Compounding this farce, the Verizon "email" OSS actually involves a Verizon employee looking up the loop qualification information requested by Covad, cutting and pasting the results into the email, and sending it to Covad. This Byzantine system is a far cry from the requirements of the Act and the competitive checklist. In the Massachusetts proceeding, Verizon conceded that it did not provide loop makeup information in compliance with the UNE Remand Order, and promised an upgrade in October 2001. The Commission should inquire as to the status of that upgrade – is it still coming? What will it provide? Moreover, the Commission should think hard about the ramifications of

[19] Audit Report at 2.

finding Verizon in compliance with the section 271 OSS requirements, when Verizon's own auditors recently informed the Commission that Verizon was not so compliant.

Indeed, the Pennsylvania PUC's evaluation of the instant applications succinctly sums up the problem with Verizon's OSS: "The loop qualification database available to CLECs via electronic access in 1999 was structured with information of primary value to the provision of Verizon PA's own retail ADSL services. Since then, the means of access has not improved."[20]

Finally, a recent (June 1, 2001) audit of Verizon's compliance with the Genuity conditions of the Bell Atlantic/GTE merger raises serious questions about Verizon's current compliance with section 271 of the Act. Verizon is required to maintain a commercially reasonable arms' length distance from Genuity. As detailed in the Mitchell and Titus audit submitted to the Commission, Verizon has done no such thing. The audit found that Verizon "did not provide sufficient evidence" for the auditors to determine "whether the commercial interactions were pursuant to commercial [*sic*] reasonable contracts."[21] Nor did Verizon provide the auditors "written representations acknowledging responsibility for its compliance with the specified requirements."[22] What is going on here? Is the Commission truly prepared to permit Verizon to flout the Commission's rules by refusing to comply with the important audit requirements? Is Verizon concealing evidence that it actually operates Genuity, in violation of section 271? No question could be more vital for the Commission to answer by further inquiry into Verizon's compliance. Verizon must be required to submit affidavits swearing to its compliance with each any every parameter of the Genuity conditions. If Verizon does

[20] PA PUC Evaluation at 132 (internal citations omitted).
[21] Audit Report at 3.

not, the Commission can have no assurance that Verizon is not violating section 271 by operating Genuity. The Commission cannot permit Verizon to escape scrutiny on this important point, particularly given Verizon's utter failure to comply with the audit provisions of its merger conditions.

OSS

Covad has recently attempted to implement EDI capability with Verizon. In Pennsylvania, Covad has had difficulty in getting Verizon to devote sufficient resources to address data integrity and other errors with EDI implementation. The Commission cannot approve the instant application until Verizon addresses and fixes – not simply promises to fix – the EDI implementation problems that Covad has raised.

For example, Covad is not receiving jeopardy notices via EDI. To demonstrate this error in EDI to Verizon, Covad took five Pennsylvania orders that Verizon had manually notified Covad (via the daily FOC+1 report) were in jeopardy (in other words, Verizon would not be provisioning the loop on time).[23] Of those five orders, only one order was properly coded as in jeopardy with EDI. In other words, despite Verizon's representation that its EDI interface automatically provides up to date jeopardy notification, Covad did not receive any such notification as to the very same orders that Verizon had notified Covad manually (on a spreadsheet) were in jeopardy. And even as to the one order that was jeopardied via EDI, Verizon did not provide any explanation as to why the order was in jeopardy in the remarks field – something Verizon has committed to do in EDI.

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[22] *Id.*
[23] *See* Attachment H.

This one example demonstrates that Verizon's EDI OSS is not functional. It also helps explain why Verizon's OSS flowthrough statistics are so poor. For example, of 840 Covad orders submitted to Verizon in February 2001, only 40% (338) flowed through Verizon's OSS.[24] In March 2001, of a total of 1183 Covad orders, only 44.8% (530) flowed through.[25] Recognizing as it must that Verizon has not properly implemented EDI, the Commission must inquire further into Verizon's flowthrough data to establish whether Verizon has devoted the proper resources to fixing these and other EDI problems.

Billing

On July 3, 2001, Verizon submitted an *ex parte* letter in this docket supplementing the record with the claim that it had recently updated its billing software capabilities. Verizon claims to have implemented system changes that have had a "significant positive effect . . . on the need for manual intervention" in deciphering Verizon bills.[26] Specifically, Verizon asserts that it conducted a sample of 31 CLEC bills for the month before the system upgrade and 31 CLEC bills the month after the CLEC upgrade. Verizon claims to have reduced the number of errors in paper bills by 50% by implementing the upgrade – reconciliation corrections were only required for .89% of the bills. Verizon even had its auditors verify that in fact it made 50% fewer reconciliation corrections after the system upgrade.[27]

Does this mean that Verizon is only making errors on .89% of its bills, as the *ex parte* letter claims? No. It means only that Verizon's electronic billing system doesn't

[24] McLean/Wierzbicki/Webster Decl. at attach 18 p. 4.
[25] *Id.* at p. 9.
[26] Letter dated July 3, 2001, from Clint Odom, Verizon, to Magalie Roman Salas, Secretary, FCC, at 1.
[27] *Id.* at 3.

match its paper billing system .89% of the time. Does that mean Verizon only incorrectly bills CLECs .89% of the time? No. It means that Verizon's electronic bills show a different amount due than its paper bills .89% of the time. It says nothing of the accuracy of the substance of those bills. For example, if Covad is billed $10 million dollars for loop recurring charges, does Verizon's audited data indicate that only $890,000 of that (.89% of $10 million) is an erroneous overcharge? No. It simply means that Covad would probably receive a paper bill that showed it owed $10,089,000 and electronic bills showing it owed $10,000,000. Is it possible that Covad only ordered $8 million worth of loops that month? Of course. Verizon's audit does nothing to demonstrate that its bills are accurate.

Does this matter? Verizon is clearly trying to dance around the substantive issue raised by Covad and other CLECs – that the boxes of paper bills that Verizon provides are impossible to audit. Covad has been fighting Verizon for months for electronic billing access, in a readable form that would allow Covad to compare its own records to Verizon's bills and audit the amounts claimed. Verizon has recently acquiesced, allowing electronic billing starting within the last two months. But this recent change does nothing to assist Covad in ensuring that it receives refunds due for prior months -- Verizon has also refused to provide any accounting of unverifiable charges. For example, Verizon is required, pursuant to the Bell Atlantic/GTE merger conditions, to provide a 25% discount off of all recurring and nonrecurring charges for loops used to provide advanced services. In Pennsylvania, Verizon claimed that it owed no discount, because Global Settlement rates set by the PUC were, in Verizon's view, not permanent rates subject to the discount. After the Pennsylvania PUC clarified to the FCC that in fact

the rates were intended as permanent rates, the FCC advised Verizon that it must apply the discount to Pennsylvania loops. Verizon informed the Commission that it would – but not as of the date it was required (June 30, 2000, the effective date of the merger), but rather as of the date of its letter to the FCC stating that the discount would be applied (which was within a few weeks of when Verizon discontinued the discount). In addition, Verizon maintained in Pennsylvania and throughout its footprint that the discount did not apply to Covad's ISDN loops, despite the plain language of the merger conditions requiring application of the discount to all loops "used to provide advanced services."[28]

Covad attempted to file a "rocket docket" complaint against Verizon, asserting that Verizon failed to provide the loop discounts in compliance with the merger conditions in Pennsylvania and other states. The Enforcement Bureau rejected Covad's request. In "settlement" negotiations with the Bureau, Verizon argued that Covad bore the burden of establishing the exact amount that Verizon had undercharged. Verizon will likely make that claim here as well. Indeed, Verizon has informed Covad that if Covad feels it did not receive the proper discount, Covad needs to file a claim with Verizon for each loop for which the discount was not properly applied. Covad simply does not have the ability to do that – Verizon's paper bills, as described above, do not set out the discounts on a circuit by circuit basis. This is a particularly egregious position for Verizon to take, given Verizon's admission that it did not apply the credits for every loop required by the merger conditions. Verizon has in effect shifted the burden to Covad to establish Verizon's errors, rather than properly assuming the burden for correcting its own admitted errors. Covad is physically unable to audit all of the paper bills provided

[28] Covad uses ISDN loops to provide IDSL, an advanced service.

by Verizon. The bills literally come in dozens of boxes each month without any indication of whether merger credits were applied on each circuit.

Given Verizon's admissions that (1) it did not provide the merger discounts in Pennsylvania for the period required, and (2) it did not provide the merger discounts on ISDN loops, Verizon has clearly raised substantial doubt about its compliance with the loop discount provisions of the Bell Atlantic/GTE merger order. The OSS checklist item of section 271 requires Verizon to prove it provides nondiscriminatory access to billing OSS functionalities. Verizon's bills do not permit Covad to audit Verizon's overcharges or Verizon's proper application of the loop discount merger condition. Covad has raised directly with Verizon the overcharge and merger condition discount issues. Verizon has failed to respond to Covad's request to provide a proper accounting of its compliance with the OSS billing obligations of the competitive checklist. The Commission must exercise its authority to require adherence to the checklist in this proceeding and require Verizon to satisfy its burden of proof in this proceeding by doing the following:

(1) provide an independently audited accounting of the application of the Bell Atlantic/GTE merger condition loop discounts to Covad throughout the Verizon footprint, and immediately refund any amounts not paid (such as for example for all ISDN loops and all loops in Pennsylvania dating back to June 30, 2000).

(2) provide an independently audited accounting of all bona fide billing disputes raised by Covad for erroneously billed UNE, collocation, and other wholesale services. Covad has already raised to Verizon on numerous occasions the need to resolve these outstanding issues, and Verizon has refused. Only the Commission in the course of this proceeding can provide Verizon the impetus to fix these billing issues.

Refusal to provision UNE DS1 loops with attached electronics

Verizon is obligated to provide unbundled loops to Covad. In Pennsylvania and throughout its footprint, Verizon maintains a policy of refusing to provide unbundled DS-1 capable loops unless the end user premises to which that loop is ordered *already has the DS-1 loop in place*. Because Verizon does not believe it is obligated to "build" facilities, it claims that it need not provide DS-1 loops (which require attached electronics) unless the electronics are already in place. In other words, Verizon refuses to condition a loop to carry DS-1 signals, a clear violation of the Commission's rules.[29]

The Commission imposed an obligation on Verizon (specifically, its predecessor incumbent LEC companies) on August 8, 1996, to unbundle local loops for requesting carriers. That obligation, found in the *Local Competition First Report and Order*, and codified in Part 47 of the C.F.R., arises from the unbundling provisions of section 251(c)(3) of the Act. In that 1996 Order, the Commission described the exact type of loop that Covad is asking Verizon to provide us: a DS-1 capable loop. To quote the Commission:

> We further conclude that the local loop element should be defined as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.[30]

The Commission then addressed the requirement for incumbent LECs, such as Verizon, to take affirmative steps to condition loops to carry digital signals:

> Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers

[29] See Verizon letter to Covad, Attachment D.
[30] *Local Competition First Report and Order* at para. 380.

> to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject BellSouth's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3).[31]

Subsequently, in the *First Advanced Services Order*, the Commission stated for a second time that incumbent LECs must take affirmative steps to condition loops for requesting carriers. Specifically, paragraph 53 of that Order states, in pertinent part:

> In the *Local Competition Order*, the Commission identified the local loop as the network elements that incumbent LECs must unbundle "at any technically feasible point." It defined the local loop to include "two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL and DS-1-level signals." To the extent technically feasible, incumbent LECs must "take affirmative action to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities." For example, if a carrier requests an unbundled loop for the provision of ADSL service, and specifies that it requires a loop free of loading coils, bridged taps, and other electronic impediments, the incumbent must condition the loop to those specifications, subject only to considerations of technical feasibility. The incumbent may not deny such a request on the ground that it does not itself offer advanced services over the loop, or that other advanced services that the competitive LEC does not intend to offer could be provided over the loop.[32]

The Commission repeated the obligation yet again in the *UNE Remand Order*:

> In order to secure access to the loop's full functions and capabilities, we require incumbent LECs to condition loops. This broad approach accords with section 3(29) of the Act, which defines network elements to include their "features, functions and capabilities."[33]

And indeed, the Commission was forced to once again reject GTE (now Verizon's) argument that it need not only provide a loop as it exists in its network:

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[31] *Local Competition First Report and Order* at para. 382.
[32] *First Advanced and Order* at para. 53 (internal citations omitted).
[33] *UNE Remand Order* at para. 167.

> GTE contends that the Eighth Circuit, in the Iowa Utils. Bd. v. FCC decision, overturned the rules established in the *Local Competition First Report and Order* that required incumbents to provide competing carriers with conditioned loops capable of supporting advanced services even where the incumbent is not itself providing advanced services to those customers. We disagree.[34]

Verizon now maintains the same position that the FCC has rejected on three occasions. Verizon claims that it has no obligation to provide an unbundled DS-1 capable loop if an DS-1 capable loop is not already in place to an end user premises. Verizon further claims that obligation to provision DS-1 loops at UNE rates depends on whether or not such loops are "currently available" in Verizon West's network at the time of the request – in other words, if the loop to the customer's premises already has the attached electronics on it. That is not Verizon's obligation. The only question Verizon is entitled to ask itself when Covad requests a DS-1 capable loop is this: is it technically feasible to condition a loop to provide DS-1 capabilities to the address requested by Covad? If the answer is yes, then Verizon must provision a DS-1 capable loop.

Fortunately, Verizon has already answered that simple question. By providing a retail DS-1 access service instead of the UNE DS-1 loop that Covad ordered, Verizon necessarily concedes that it is technically feasible to condition a loop to support DS-1 digital signals to the address requested by Covad. Verizon simply prefers to condition that loop on Covad's behalf only via Verizon's retail arm, not its wholesale arm. Therefore, Verizon is not only denying Covad access to the UNEs to which it is entitled by law, it is also engaging in a discriminatory practice of conditioning loops for its retail arm while refusing to do so for requesting carriers.

The Commission must instruct Verizon to affirmatively end this policy, and to compensate carriers that have been forced to order access services, or been denied service

[34] *UNE Remand Order* at para. 173.

altogether. Verizon is in violation of checklist item 4 because of its refusal to provide DS-1 capable loops in compliance with section 251(c)(3) and the Commission's rules.

Out of region BOC CLEC failures – the public interest test

The public interest prong of the competitive checklist allows the Commission to inquire into the general willingness of a Bell company to open its local market to competitors. Traditionally, the Commission has used the public interest prong to examine the success of local entrants at penetrating the market in the particular state for which long distance relief is sought. Given the recent spate of troubles facing the CLEC industry, Bell applicants have claimed in FCC proceedings that the failure of local entrants is due not to any malfeasance by the Bell companies, but rather by the inability of carriers to secure adequate funding, or even "bad business plans."

There is one "CLEC" that is not now, nor ever will be, subject to any such variables. The ability of that CLEC to enter a BOC market and successfully compete for customers would not be subject to distracting variables often cited by the BOCs. That CLEC is the out-of-region CLEC affiliate of another BOC. The Commission should wonder why BellSouth has never detailed its efforts to enter Missouri, or Texas, or Kansas, or Massachusetts. The Commission should be curious to understand why SBC Telecom – an entity with an obligation to enter markets outside of SBC's monopoly territory -- has not ever filed comments in a Verizon long distance application. The Commission should seriously consider examining, as part of the public interest prong of this and future section 271 applications, whether a BOC-affiliated CLEC has attempted to enter the market in the applied-for state, and what success it has had.

Conclusion

For the reasons set out above, the Commission should reject Verizon's application for Pennsylvania.

Respectfully submitted,

/s/

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